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Client's Fraud Claim Against Attorneys Barred By Three Year Statute of Limitation

February 22nd, 2011 by [Steve Wasserman](#)

In an unpublished opinion, the United States District Court for the Northern District of California has held that a client's fraud claim against its former attorneys was barred by the three year limitation period set forth in California Code of Civil Procedure 338(d). *Landmark Screens, LLC v. Morgan Lewis & Bockius, LLP*, Case No. 5:08-cv-02581-JF, decided Feb. 7, 2011. While legal malpractice claims in California are subject to a one year limitation period, that statute exempts fraud claims, which are subject to the three year statute of limitation for such claims.

Landmark claimed that its attorneys failed to timely file a patent application, then delayed six months before disclosing both the untimely filing and the lawyers' unsuccessful efforts to remediate the problem. Landmark claimed that the lawyers' statements that they were trying to fix the problem and that they would report back to Landmark served to toll the limitations period.

The District Court disagreed. It held that once Landmark knew of the defective filing, the unsuccessful efforts to rectify the problem, and that the attorneys had withheld that information for over six months, Landmark knew of sufficient facts to put it on inquiry notice of a fraud claim. It did not file within three years of such notice, therefore its fraud claim was time barred. "Landmark's choice to let Defendants attempt to rectify the damage caused by their fraud did not toll the statute of limitations, which began running when Landmark had knowledge of the facts giving rise to its fraud claim." This case represents one of those unfortunate situations in which a client's initial lawyer allegedly mishandled a matter, and the client then faced similar obstacles in pursuing its malpractice claim against that lawyer.